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March 13, 2008

Via Electronic Mail

Ms. Linda Fiack
Executive Director
Delta Protection Commission
14215 River Road
Walnut Grove, CA 95690

Re: Revised Old Sugar Mill Specific Plan Approved by the Yolo County Board of Supervisors on March 11, 2008

Dear Ms. Fiack, Chair and Members of the Delta Protection Commission:

We are writing on behalf of the Natural Resources Defense Council ("NRDC") to express its grave concerns regarding the revised Old Sugar Mill Project, proposed for construction near Clarksburg. NRDC is a non-profit organization with more than 525,000 members nationwide, including many who live and work in and around the Delta. NRDC has long devoted considerable attention to the protection and restoration of the Delta. While NRDC does not typically become involved in local land use matters, this proposal raises significant issues with broad policy implications regarding the wisdom of building new residential development in vulnerable Delta floodplains, therefore demanding NRDC's attention.

One year ago, the Delta Protection Commission ("DPC") determined that the Old Sugar Mill Project would expose the public to substantial risk from catastrophic flooding and adversely impact agriculture, rendering the Project inconsistent with the Delta Protection Act and the Land Use and Resource Management Plan for the Primary Zone of the Delta (the "Delta Plan"). Regrettably, on March 11, 2008 the Yolo County Board of Supervisors re-approved the Project with only three minor modifications that do not begin to address the concerns of either NRDC or the DPC.

NRDC strongly urges the DPC not to approve the revised Old Sugar Mill Project for the following reasons. Unfortunately, the public was provided only two days from the County's approval of the Project on March 11, 2008 to digest and respond to a thick County Staff report including five attachments containing new information and arguments in favor of Project approval. NRDC has done its best within this impossibly short time frame to lay out its concerns. As one of the original appellants in this matter, NRDC expects to be afforded sufficient opportunities to submit additional oral and written comments at the DPC's hearing on this matter scheduled for March 27, 2008.

Background

A. The Delta Protection Act

The Delta Protection Act reflects the Legislature's judgment that "the [D]elta is inherently a floodprone area wherein the most appropriate land uses are agriculture, wildlife habitat, and, where specifically provided, recreational activities." Pub. Res. Code § 29704. The Legislature's judgment in this regard is shared by the Governor's Delta Blue Ribbon Task Force, which recently issued a report that concludes:

[T]he Delta floodplains are a fundamentally unsafe place for housing even with new investments in levees. . . . *It is irresponsible to make land-use decisions that permit and encourage construction of significant numbers of new residences in the Delta in the face of the flood hazards that unquestionably exist there. . . .* The impacts of climate change – especially rising sea level and increased precipitation runoff patterns – will only exacerbate future threats to public safety associated with such development in the Delta.

Delta Vision (Attachment 1 hereto) at 18 (emphasis added). An October 15, 2007 report from an Independent Review Panel to the Department of Water Resources similarly urges local governments to "restrict future development" in Delta floodplains. *See* A California Challenge (Attachment 2) at iv-v. The Review Panel warns that "[a]dditional development in these areas will simply put more people at risk and create an ever-escalating demand for additional flood damage reduction structures with high economic, societal, and environmental costs." *Id*

It is precisely because the Delta is so inherently unstable and floodprone that the Delta Protection Act prohibits new development in the Primary Zone that would "expose the public to increased flood hazard." Pub. Res. Code § 29763.5(g). To this end, Levee Policy 3 in the Delta Plan directs local governments to "carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety and welfare." 14 Cal. Code Regs. § 20100(c). Along similar lines, the Plan's Land Use Policy 4 specifies that "[n]ew non-agricultural residential development, if needed, shall be located within the existing Primary Zone communities where support infrastructure and flood protection are already provided." 14 Cal. Code Regs. § 20060(d).

To ensure that agriculture remains the dominant land use in the Delta, the Delta Protection Act further prohibits any development that would "result in any increased requirements or restrictions upon agricultural practices in the primary zone." Pub. Res. Code § 29763.5(k). Thus, Land Use Policy 3 in the Delta Plan requires developers to provide buffers that will "adequately protect [the] integrity of land for existing and future agricultural uses." 14 Cal. Code Regs. § 20060(c). Land Use Policy 3 specifies that "[b]uffers may include berms and vegetation, as well as setbacks of 500 to 1,000 feet." *Id*.

B. The Old Sugar Mill Project

The Old Sugar Mill Project is a mixed-use residential development that would be built north of Clarksburg on a 105-acre parcel in the Delta Primary Zone. The parcel is adjacent to the Sacramento River and directly behind an agricultural levee composed of coarse, sandy soils dredged from the river channel nearly a century ago. The surrounding area to the north and west consists of farmland and vineyards. If built, the Old Sugar Mill Project would be the first urban residential development in the Primary Zone of the Delta since passage of the Delta Protection Act in 1992.

On October 24, 2006, Yolo County approved the Old Sugar Mill Project as originally proposed by the developer. Pursuant to the Delta Protection Act, Pub. Res. Code § 29770(a), NRDC appealed the County's approval of the Project to the DPC. After three lengthy public hearings, the DPC determined that the Project was inconsistent with the Delta Protection Act and the Delta Plan. Specifically, the DPC concluded that the original Old Sugar Mill Project would expose the public to increased flood hazard and adversely impact agriculture, in violation of Levee Policy 3, Land Use Policy 4 and Land Use Policy 3 in the Delta Plan. In reaching these conclusions, the DPC made the following findings:

1. "Flood protection for the project area is uncertain and may be below a 100-year level."
2. "[The project] would result in a density significantly greater than the existing community and greater than the standard density for this type of area, thus reducing the level of public health and safety by inducing growth in the area."
3. "The residences may be constructed [under the proposal] even though levee improvements that may be required to provide adequate flood protection may not occur due to infeasibility."
4. "The 300-foot buffer provided . . . to separate the development component of the proposal and agricultural operations on adjacent parcels is significantly less than the 500 foot to 1000-foot buffer recommended in the [Delta] Plan."

Findings and Analysis of the DPC (Feb. 22, 2007) ("DPC Findings") at 5-9. For these and other reasons, the DPC voted on February 22, 2007 to remand the Old Sugar Mill Project to Yolo County for reconsideration.

On March 11, 2008, the Yolo County Board of Supervisors approved a "revised" Old Sugar Mill Project, together with a short addendum to the Project's environmental impact report ("EIR"). As set forth below, the revised Project is little different than the original Project and remains inconsistent with the Delta Protection Act and the Delta Plan.

Discussion

The DPC's careful findings with respect to the original Old Sugar Mill Project are equally applicable to the revised Project.

First, the agricultural levees that surround the project site still have not been certified as providing 100-year protection, and the County acknowledges that the risk of levee failure remains "*significant and unavoidable*." EIR Addendum at 19 (emphasis added). *See also* Findings of the Yolo County Board of Supervisors Regarding the Old Sugar Mill Project, as Revised ("Yolo Findings") at 8 ("[T]here is uncertainty about the level of flood protection that these levees afford.").

Second, the revised Project still would result in a density that is significantly greater than the existing community of Clarksburg, as the County acknowledges. *See, e.g.*, Planning Commission Staff Rpt. (Jan. 24, 2008) at 11 ("Much of the existing town of Clarksburg is comprised of residential lots with an average density of 4 units per acre. The proposed density of the [revised] Old Sugar Mill Specific Plan is 5.8 units per net acre.").

Third, the revised Project still could be constructed even if levee improvements that are necessary to provide adequate flood protection are dismissed as infeasible. *See* First Amendment of Development Agreement at 6 ("requiring only that "*feasible* flood protection improvements identified in the Flood Protection Plan must be implemented before any building permits are issued") (emphasis added).

Fourth and finally, the revised Project's 300-foot agricultural buffer is still significantly less than the 500- to 1000- foot buffer recommended in the Delta Plan. *See* EIR Addendum at 10. *See also* Yolo Findings at 2 ("The revised Project retains the 300-foot buffer.").

Notwithstanding the above, the County maintains that three modifications make the revised Project consistent with the Delta Protection Act and Delta Plan. Specifically, the County relies on the following modifications:

- "The applicant has proposed to elevate the homes to one foot above base flood elevation at the time that Building Permits are issued."
- "The applicant has reduced his request to a maximum of 123 residential units."
- "The applicant has redefined the buffer to begin at the western edge of the right-of-way for Willow Avenue, thus extending it 15-25 feet further."

See Memorandum to Supervisor Duane Chamberlain from John Bencomo (Mar. 11, 2008) ("County Staff Rpt.") at 3.

Contrary to what the County determined, these three minor changes do not make the revised Old Sugar Mill Project consistent with the Delta Protection Act and the Delta Plan. As discussed below, elevating habitable areas one foot above the 100-year base flood elevation will not ensure the safety of project residents, constructing 123 residential units is not consistent with community desires or needs, and the slightly revised buffer will not protect existing and future agricultural uses.

I. Elevating Habitable Areas One Foot Above the 100-Year Base Flood Elevation Will Not Ensure the Safety of Project Residents.

The County makes much of the fact that Mitigation Measure 4.7.7a has been revised “to require elevation of all residential units to one-foot above base flood elevation [“BFE”] per the County’s Flood Damage Prevention Ordinance,” eliminating the original measure’s alternative provision that habitable areas be raised to “one foot above the highest expected flood elevation (determined by Wood Rogers [in June 2006] to be 4.0 feet), whichever is grater at the time a residential building permit is issued.” EIR Addendum at 17.

This change does not ameliorate the substantial risk of catastrophic flooding. The County acknowledges that “FEMA still has not established a BFE for the project site.” *Id.* at 18. In the event that FEMA has not established the BFE prior to the issuance of building permits, revised Mitigation Measure 4.7.7a provides that “the best available information shall be used by a registered professional engineer in determining the BFE.” *Id.* at 17. The County’s “unofficial estimate” as stated in its EIR addendum is that a BFE determined in accordance with revised Mitigation Measure 4.7.7a could result in habitable portions of the proposed homes being elevated by 11 to 14 feet. *Id.* at 19. Elsewhere in its staff report, the County estimates that revised Mitigation Measure 4.7.7a would “require elevation of living areas at least 9 feet above existing grade.” Yolo Findings at 12. But the bottom line is that revised Mitigation Measure 4.7.7a in no way commits to either estimate. Instead, as was the case with the original Project, registered professional engineers (perhaps from Wood Rodgers Inc.) may very well arrive at a BFE that is decidedly below the BFE that FEMA ultimately establishes.

Moreover, Section 8-3.205 of the County’s Flood Damage Prevention Ordinance defines “base flood” as a flood “having a one percent chance of being equaled or exceeded in any given year (also called the ‘100-year flood’).” However, global warming is already increasing both the frequency and magnitude of flooding in the Delta. Accordingly, it is well established that elevating homes to the 100-year BFE is no longer sufficient flood protection for residential developments. *See, e.g., A California Challenge* (Attachment 2) at v (“One hundred year protection is not an acceptable level of protection for urban areas.”). In recognition of this reality, recently enacted Senate Bill 5 (Machado) will soon require that local governments guarantee at least 200-year flood protection for most dense urban residential areas.

The County concedes that it did not consider the impact of global warming on base flood elevations *at all* in the environmental impact report (“EIR”) for the Old Sugar Mill Project. *See* EIR Addendum at 25 (“Global climate change was not specifically studied in the EIR.”). In its recent addendum to the Project EIR, the County recognizes that flooding “could be exacerbated or otherwise affected by global climate change.” *Id.* However, the County declines to consider this very real impact on the grounds that it is “difficult to assess the potential effects of global climate change on the frequency or magnitude of flood events and related infrastructure concerns.” *Id.* at 26. According to the County:

In the absence of some specific information about potential changes in the frequency and magnitude of flood events in the vicinity of the Project site associated with global climate change, the County has no basis for concluding . . . that future inhabitants of the Project will be exposed to substantially more severe flood risks as a consequence of global climate change.

Id. at 30. The County’s dismissal of this critical safety issue is inexcusable.

While the County’s failure to comply with the California Environmental Policy Act (“CEQA”) is not before the DPC, the provisions of that statute surely should inform the DPC’s consideration of the irrationality of the County’s refusal to take into account global warming effects on flooding in the Delta. CEQA “do[es] not require prophecy,” and the County need not “predict precisely what the environmental effects, if any, of future [events] will be.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376, 398. At the same time, as the California Supreme Court has held, “[t]he fact that precision may not be possible . . . does not mean that no analysis is required.” *Id.* at 399. The Supreme Court has made clear there is “no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” *Id.* at 399. To the contrary, the CEQA Guidelines specify:

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. *While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.*

14 Cal. Code Regs. § 15144 (emphasis added). The CEQA Guidelines are explicit that an agency may not simply dismiss an impact as “speculative” until it has undertaken a “thorough investigation.” 14 Cal. Code Regs. § 15145.

While there may not be “specific information” about the precise impact that global warming will have “in the vicinity of the Project site,” as the County maintains, the County – and the DPC – “can surely make informed judgments” about global warming’s probable effect based on a wealth of existing studies and widely accepted methodologies. *Laurel Heights Improvement Ass’n*, 47 Cal. 3d at 399.

To begin with, it is undisputed among scientists that rising global temperatures – even modest increases of 2°C per century – will “reduce the volume of snowpack, contributing to higher flood peaks during the rainy season” in the Delta. *See* Knowles and Cayan 2002 (Attachment 3) at 38-1. *See also* Barnett et al. 2008; Kerr 2007; Hayhoe et al. 2004 (Attachments 4-6). Sierra snowpack serves as an enormous reservoir, delaying the release of up to 40% of the annual water supply for California until after April 1. In a 2006 study, the California Department of Water Resources (“DWR”) demonstrated that global warming-induced runoff from the Sierra into the Delta has already significantly increased over the last 100 years. *See* Progress on Incorporating Climate Change into the Management of California’s Water Resources (Attachment 7) at 2-22. At current rates of global warming, scientists estimate that by 2060, 2.5 million acre-feet of water will be prematurely released from the Sierra Nevada mountains. *See* Knowles and Cayan 2002 (Attachment 3).

It is equally well established that global warming is also causing and will continue to cause sea level rise. *See, e.g.*, Intergovernmental Panel on Climate Change 2007; California Climate Change Center 2006 (Attachments 8-9). DWR has determined that “[t]here is a possible range of sea level rise of from 0.7 to 4.6 feet over the next 100 years, depending upon the assumed future greenhouse gas emissions and the forecast model used.” Draft State Water Project Reliability (“SWP”) Report (Attachment 10) at 21. “The CALFED Independent Science Board has recommended that for planning purposes incorporating sea level rise, we should use the full range of variability of 50-140 cm ” – *i.e.*, 1.7 to 4.6 feet. *Id.* at 21-22. Sea level rise increases the force on levees in two ways: “first, the higher the sea level the higher the water pressure against the base of the levee, and second, the higher the sea level the larger the levee areas experiencing elevated water pressure.” California Climate Change Center (Attachment 8) at 38.

Given that global warming is causing both greater runoff flows from the Sierra into the Delta and rising mean sea levels intruding into the Delta, scientists and expert agencies have projected that flood events in the Delta will become increasingly frequent and severe. The Delta Risk Management Strategy (“DRMS”) Project expects “Delta flood hazard[s] . . . to increase 200% due to sea level rise and more frequent high flows.” SWP Report (Attachment 10) at 21. The DRMS Project report concludes that a “medium expectation” is that “a flood that can now be expected to occur about once in 100 years can be expected to occur once in about 67 years by 2050.” DRMS Phase 1 Risk Analysis Draft (Attachment 11) at 14-4. *See also* Mount and Twiss (2005) (Attachment 12) (calculating a “2 in 5” chance of a 100-year flood event occurring in the Delta in the next 50 years). Indeed, a recent report from an Independent Review Panel to DWR entitled “A California Challenge – Flooding in the Central Valley” warns that the increased probability of a 100-year flood event due to global warming is such that the definitions of 100-year and 500-year flood events may soon “lose their meaning” and effectiveness as management tools. A California Challenge (Attachment 2) at 7.

In short, while there are of course varying estimates regarding the precise degree to which global warming will increase Delta flooding, there is broad consensus that Delta flooding will increase significantly over today's baseline. Accordingly, agencies at every level of government are calculating increased flooding risks into their land management decisions. Thus the DWR's Independent Review Panel emphasizes: "Planning and project decisions and calculations of risks *must take into account* these possible changes." *Id.* at 26 (emphasis added). Ignoring global warming only increases the likelihood that levee failures and resultant flooding will result in severe human injury and loss of life, infrastructure damage, loss of productive farmland, and other damages. In recognition of this fact, the State Legislature has directed agencies and local governments to plan for global warming. For example, Senate Bill 17 (Florez) requires the Central Valley Flood Protection Board (formerly, the Reclamation Board) to assess the impacts of climate change before issuing a flood permit. *See* Water Code § 8610.5. Even the U.S. Army Corps of Engineers has concluded:

We have a professional and ethical obligation to [assess] our projects to ensure that they are correctly designed, constructed and maintained . . . to compensate for subsidence/sea level rise in order to provide appropriate flood . . . protection.

Army Corps of Engineers Memorandum (Attachment 13) at 1. Unfortunately, here the County has not undertaken a "reasonably conscientious effort . . . either to collect additional data or to make further inquiries of environmental or regulatory agencies having expertise in the matter," as required by logic and by law. *See Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1370. The County's decision to dismiss global warming impacts out of hand because they are too "difficult to assess" sets a dangerous precedent.

In short, the revision to Mitigation Measure 4.7.7a does not address the DPC's concerns regarding the risk of levee failure and catastrophic flooding, as the County ultimately admits. While the Delta Protection Act explicitly prohibits new development in the Primary Zone that would "expose the public to increased flood hazard," Pub. Res. Code § 29763.5(g), the County concedes that:

As with the original project, even as revised, *the proposed project . . . may expose people and new structures to a significant risk of loss, injury, or death from deep flooding as a result of potential levee failure.*

EIR Addendum at 30 (emphasis added).¹

¹ While conceding that residents of the Old Sugar Mill Project would face significant risks from flooding, NRDC notes that the County has steadily reduced the amount of flood insurance that the developer must provide for the affordable residences from 10 years to 6 years and for the market rate residences from to 6 years and only a single year. *Compare* Oct. 24, 2006 Development Agreement at 12 *with* First Amendment of Development Agreement as adopted by the Board of Supervisors on March 11, 2008.

II. Building 123 Residential Units Is Not Only Inconsistent With Community Desires and Needs, but also Contrary To the Delta Plan's Prohibition on Increased Residential Densities in Flood Hazard Areas.

It is a well established principle that urbanization invites further urbanization. In recognition of this fact, Levees Policy 3 in the Delta Plan requires that:

[L]ocal governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. *Increased flood protection shall not result in densities beyond those allowed under zoning and general plan designations in place on January 1, 1992, for lands in the Primary Zone.*

14 Cal. Code Regs. § 20100(c) (emphasis added). The County itself observes that “Levees Policy 3 appears to state that increased flood protection should not serve as a catalyst for new development in the Primary Zone.” Yolo Findings at 11. Additionally, Land Use Policy 4 Plan directs that: “New non-agricultural residential, *if needed*, shall be located within the existing Primary Zone communities *where support infrastructure and flood protection are already provided.*” *Id.* at § 20060(d) (emphasis added).

The DPC found that the original Old Sugar Mill Project violates both of these requirements, on several bases. Specifically, with respect to Levees Policy 3, the DPC found that: “The [Project] includes a change in zoning from Heavy Industrial [in effect in 1992] to a mixed-use that includes 27% of land zoned residential and placing an intense residential development. By increasing the amount of land zoned residential and placing an intense development on it, the project supports an increase in density and a decrease in the level of public safety in the area.” DPC Findings at 8. The DPC also noted that the General Plan in effect in 1992 projected exceedingly low growth in this area, with which the Project is completely out of proportion. DPC Findings at 7. Moreover, even if the developer were required to provide increased flood protection, doing so is explicitly not intended to “result in densities” beyond those allowed in 1992. This is exactly “the catalyst for new development in the Primary Zone” that the County recognizes is contrary to Levees Policy 3. And, of course, the DPC found that flood protect is not in place for a use such as this Project, as required by Land Use Policy 4; moreover, “[t]hese residences may be constructed even though levee improvements that may be required to provide adequate flood protection may not occur due to economic infeasibility . . . reduce[ing] the level of public health and safety in the area by increasing the number of people at risk of flooding.” Findings at 6. Finally, the DPC noted, “[t]here is insufficient evidence that 162 new residences in Clarksburg are “needed” pursuant to Land Use Policy 4. *Id.* at 7

None of these findings are affected by the “revisions” to the Old Sugar Mill Project. It does proposes fewer residential units than the original project – 123 instead of 162. The 123

residences that are currently proposed would still nearly double the existing town of Clarksburg, and the revised Project would be nearly 50% more dense than the surrounding community. *See* Planning Commission Staff Rpt. at 11. Instead of “27% of the land being used for moderately high density residential development,” as the DPC found inconsistent with Levee Policy 3, the revised Project provides for 22% of the land being used for residential development – not much of a difference. *Id.* at 6. And, as established *supra* in Section I, this modest decrease in housing units does not “protect public health, safety, and welfare,” as also required by Levee Policy 3 and, implicitly, Land Use Policy 4. It simply means that only 77% as many people will be subject to the dangers of catastrophic flooding.

Nor has the County presented adequate evidence that 123 additional non-agricultural residences are “needed,” or even consistent with community desires, as the County maintains. The DPC noted in its remand order that “the General Plan Housing Element predicts that an additional 27 housing units will be needed . . . by the year 2020.” DPC Findings at 7. The Old Sugar Mill Project, even as revised, would exceed in just a few years the level of growth allowed by the General Plan over the next 12 years *by 78 per cent*. It is significant that this level of growth is not only what was predicted in the General Plan, but what was desired for the community. Thus the guiding principle of minimal residential growth for the area is echoed throughout the 1982 General Plan. *See, e.g.* 1982 Clarksburg General Plan at ii (“Faced with the potential problems that would come with growth, this community has determined to stabilize its size and configuration to present standards.”); *id* at III-1 (“This Plan provides policies that will allow only replacement and infill of commercial and residential uses. No significant rise in density or population numbers will result.”). Indeed, right up to Yolo County’s approval of the original Old Sugar Mill Project in October 2006, the Clarksburg General Plan required a minimum single family residential lot size of one acre in order to ensure low-density, agriculturally compatible residential patterns in the Clarksburg area.

And, while legally irrelevant, the County has provided no evidence that this Project is “consistent with community desires,” would reduce the conversion of farmland to ranchettes, would create nearly 600 jobs, or would be affordable to those earning the median County income. *See* Yolo Findings at 5-8. The fact that a General Plan Advisory Committee hand-picked by the Supervisor who has consistently pushed for approval of the Project recommended that it include up to 126 new residential units is not a reflection of community “support.” It is obvious solely from the three public hearings before the DPC that there is considerable community controversy about this Project. The County’s snapshot of the current real estate picture is equally unpersuasive. Its plea that the conversion of local farmland to “ranchettes” be stopped is odd at the least, since the County itself determines whether to issue permits for such construction and, as the County acknowledges, may be desired by those who “seek large, rural parcels for individual reasons.” The County supplies no information regarding the number or nature of the jobs that will supposedly be created by the Project, nor, again, does it explain the

relevance of this claim.² And its claim that the Project residences “will be affordable to those earning at least the County median income of \$65,700 (for a family of four)” is not only unsupported by data regarding the prices of the residences, but ignores the median family income of Clarksburg, which seems more relevant given the County’s argument that the Project will address the housing needs of former and existing Clarksburg residents.

The County has offered no explanation as to why, just a few years later, the community suddenly “needs” four and a half times more housing. Contrary to the Delta Protection Act and the Delta Plan, the revised Old Sugar Mill Project continues to, as concluded by the DPC with respect to the original Project, “include[] a change in zoning from Heavy Industrial to a residential use that would result in a density significantly greater than the existing community and greater than the standard for the county for this type of area, thus reducing the level of public health and safety by inducing growth in the area.” DPC Findings at 9.

In conclusion, equally relevant to the revised Project is the DPC finding that:

Uncertainties . . . [regarding flood hazards], together with increasing recognition of the potential influence and impact of natural occurrences such as climate change and earthquake events, elevate the acknowledgement of flood risks to be taken into the consideration of preparation of [a Flood Protection Plan for the Project]. The significance of providing assurances for public health and safety while not increasing human exposure to such impacts through projects that increase densities through changes in the zoning has become increasingly important and projects that promote such change in densities, such as the [Old Sugar Mill Project], are therefore inconsistent with the [Delta Plan].

DPC Findings at 10.

III. The Revised Buffer Will Not Prevent Conflicts Between the Project and Existing and Future Agricultural Uses.

Finally, the revised Old Sugar Mill Project slightly modifies the agricultural buffer so that it runs 300 feet from the western edge of Willow Avenue, rather than 300 feet from the first row of vines, as was previously the case. According to the County, this change will enlarge the buffer by just 15-25 feet. *See* EIR Addendum at 10. There is no dispute that the revised buffer

² Clearly, it is attempting to make this Project more appealing to the community, but while including job estimates, it failed to disclose until the Board of Supervisors’ hearing two days ago that it is, as is the case with flood insurance, radically reducing the impact fees offered by the school district, by our estimate, by over \$837,000. *See* Draft EIR at 4.11-3.

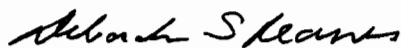
remains significantly smaller than the 500- 1000- feet recommended in the Delta Plan. *See* 14 Cal. Code Regs. § 20060(c).³

Moreover, the Delta Plan requires developers to provide buffers that will “adequately protect [the] integrity of land for existing *and future* agricultural uses.” 14 Cal. Code Regs. § 20060(c) (emphasis added). The County’s analysis does not demonstrate that the 300-foot buffer, as revised, will prevent conflicts between the Old Sugar Mill Project and potential future agricultural uses. Instead, the County’s analysis largely presumes that the agricultural parcel to the west of the Project site will remain a vineyard. *See, e.g.,* Yolo Findings at 3 (“[T]he vineyard is likely to remain for many years.”). *See also id.* at 2 (“All *existing* agricultural uses of the *vineyard* may continue without any impairment.”) (emphasis added). The County’s refusal to require an agricultural buffer that would accommodate future agricultural uses is inconsistent could result in increased restrictions on agriculture and remains inconsistent with Land Use Policy 3.

Conclusion

The revised Old Sugar Mill Project remains inconsistent with the Delta Protection Act and the Delta Plan. For these reasons, NRDC strongly urges the DPC not to approve the revised Old Sugar Mill Project.

Sincerely,



Deborah S. Reames
Gregory C. Loarie
Attorneys
Phillip Hoos
Research Associate

Attachments

³ The County acknowledges that the small berm and hedgerow that accompanies the revised buffer is intended only “to make the buffer more attractive and create a visual screen.” Yolo Findings at 2. The County does not suggest that the berm and hedgerow will make the buffer more effective.

LIST OF ATTACHMENTS

1. Blue Ribbon Task Force 2008. Our Vision for the California Delta. January 29, 2008.
2. Independent Review Panel 2007. A California Challenge-Flooding in the Central Valley. A Report to the Department of Water Resources, State of California. October 15, 2007.
3. Knowles, N. and Cayan, D.R. 2002. Potential Effects of Global Warming on the Sacramento/San Joaquin watershed and the San Francisco Estuary. *Geophysical Research Letters*, vol. 29, no. 18, pgs.38-1-4. September 28, 2002.
4. Barnett. T.P. et al. Human-Induced Changes in the hydrology of the Western United States. *Scienceexpress*. January 31, 2008.
5. Kerr, R.A. 2007. Global Warming Coming Home to Roost in the American West. *Science*, vol 318, pg. 1859. December 21, 2007.
6. Hayhoe, K., et al. 2004. Emissions Pathways, Climate Change, and Impacts on California. *Proceedings of the National Academy of Sciences*, vol. 101, no. 34, pgs. 12422-12427.
7. Department of Water Resources 2006. Progress of Incorporating Climate Change into Management of California's Water Resources, Technical Memorandum Report. State of California.
8. Intergovernmental Panel on Climate Change. 4th Assessment Report, Climate Change 2007: Synthesis Report
9. California Climate Change Center. Projecting Future Sea Level Rise, State of California. White Paper CEC-500-2005-202-SF. March 2006.
10. The State Water Project Delivery Reliability Report Draft December 2007. State of California Department of Water Resources.
11. Delta Risk Management Strategy Project. URS and JBA. 2007. Risk Analysis Report. Draft. June, 26, 2007.
12. Mount, J. and Twiss, R. 2005. Subsidence, Sea Level Rise, and Seismicity in the Sacramento-San Joaquin Delta. *San Francisco Estuary and Watershed Science*, vol. 3, iss. 1. March 2005.
13. U.S. Army Corps of Engineers, Memorandum for Major Subordinate Commands, December 4, 2006